

**STATEMENT OF CONSIDERATION RELATING TO**  
401 KAR 8:030 Amended after comments

Energy and Environment Cabinet  
Department for Environmental Protection  
Division of Water

**I** The public hearing on 401 KAR 5:310, scheduled for August 25, 2009, at 10:00 a.m. at 300 Fair Oaks Road, was held and written comments were received during the public comment period.

**II** The following people attended the hearing:

<b><u>Name and Title</u></b>	<b><u>Affiliation</u></b>
Kimberly Padgett, State Director	KY RCAP
Ruth Lancaster, Production Coordinator	Louisville Water Company
Melissa Brothers, Executive Director	Kentucky Water and Wastewater Operators' Association

The following people submitted comments:

<b><u>Name and Title</u></b>	<b><u>Affiliation</u></b>
David Wakefield, Manager	Hardinsburg Water Treatment Facility
Annette DuPont-Ewing, Executive Director	Kentucky Municipal Utilities Association
Jimmy Grimm, Chairman	Kentucky Water and Wastewater Operators' Association
Emily Harkenrider	Legislative Research Commission
Greg Heitzman, President and CEO	Louisville Water Company
Ruth Lancaster	Wastewater operator

**III** The following people from the promulgating administrative body responded to the written comments:

<b><u>Name and Title</u></b>	<b><u>Affiliation</u></b>
Julie Roney, Drinking Water Program	Division of Water
Abby Powell, Regulations Coordinator	Division of Water

#### **IV Summary of Comments and Responses for 401 KAR 8:030**

**(1) Subject Matter: Drafting Suggestions**

**(a) Comment: Emily Harkenrider (Legislative Research Commission), Annette DuPont-Ewing (Kentucky Municipal Utilities Association)**

Ms. Harkenrider and Kentucky Municipal Utilities Association suggested several technical amendments to the regulations, including formatting, grammar, and drafting suggestions.

**(b) Response:** The agency agrees and has made the suggested changes.

**(2) Subject Matter: Differentiation in staffing requirements**

**(a) Comment: Greg Heitzman (Louisville Water Company)**

Louisville Water Company believes that the requirement for Class IVA water treatment plants to have certified operators on site, but no similar requirement for smaller plants, is contrary to the intent of the regulation. Staffing requirements should be the same to ensure adequate public health protection.

**(b) Response:** The requirement for a water treatment plant to have a certified operator on site if water is being treated is consistent for Class IIA, IIIA and IVA classifications. Only the combined water treatment/water distribution classification of IA-D allows for the certified operator to “perform system-related duties” as a function of the definition of a combined license.

**(3) Subject Matter: Requirement for operators to be on site**

**(a) Comment: Greg Heitzman (Louisville Water Company)**

Louisville Water Company recommends that the final regulation allow water systems the flexibility of using a combination of technology and on-call certified operators to meet the staffing requirement as long as the utility can demonstrate protection of public health.

**(b) Response:** The cabinet believes that surface water treatment plants, due to the complexity of the treatment processes, the variable nature of the source water, and the susceptibility of the source water to contamination, should be staffed by properly certified operators while water is being treated. The regulation has been amended to allow a system to propose alternate staffing plans. The plan must be submitted to the cabinet for approval and must be consistent with KRS 223.210.

**(4) Subject Matter: Membrane Filtration**

**(a) Comment: David Wakefield (Hardinsburg Water Treatment Facility)**

Low pressure reverse osmosis is not considered conventional treatment. Hardinsburg Water Treatment Facility asks that this interpretation be confirmed by Kentucky Division of Water.

**(b) Response:** The Cabinet agrees that reverse osmosis filtration is not considered “conventional” filtration. To clarify the differing requirements pertaining to subclass A and subclass B, the regulation has been amended.

- (5) **Subject Matter: “Under supervision”**  
(a) **Comment: Jimmy Grimm (Kentucky Water & Wastewater Operators’ Association)**  
KWWOA suggests modifying “under supervision” in Section 1(2)(c)1.b., 2.b, and 4.b to “under the certified operator’s supervision.”  
(b) **Response:** The agency believes the existing language is clear and expresses the intent of the statute.
- (6) **Subject Matter: Staffing requirements, certified distribution system operator**  
(a) **Comment: Jimmy Grimm (Kentucky Water & Wastewater Operators’ Association)**  
KWWOA recommends that the Division require more stringent staffing requirements for some duties. Specifically, duties such as placing new lines in service, disinfection, chlorination, and sampling should require the presence of a distribution system operator.  
(b) **Response:** The suggested change would take additional time and planning to evaluate its impact on public water systems. It will be considered should future regulatory revisions be necessary.
- (7) **Subject Matter: Support of more stringent requirements**  
(a) **Comment: Jimmy Grimm (Kentucky Water & Wastewater Operators’ Association)**  
KWWOA offers support of the changes in the regulation that require an operator to be physically present at the water treatment plant and the removal of the wording that allowed for “performing system-related duties”.  
(b) **Response:** The agency appreciates the support of the Kentucky Water and Wastewater Operators’ Association.
- (8) **Subject Matter: System-related duties**  
(a) **Comment: Ruth Lancaster**  
Please clarify if the intake structure or low lift pump is included as part of the plant, as referred to in “system-related duties shall be duties related to the operation and maintenance of the water treatment plant”.  
(b) **Response:** The intake structure and low lift pump are not included as part of the water treatment plant in this regulation. The language allowing an operator to be away from the plant on “system-related duties” was omitted from the Class IIA, IIIA and IVA classifications and was retained for only the Class IA-D classification. The current wording for a Class IVA plant is that the operator “shall be present at the water treatment plant”. As the subclass “A” category primarily includes the more complex water treatment on surface water sources, the agency believes that a certified operator should be on-site at the water treatment plant while water is being treated. Should it be necessary to inspect the intake, other water system staff may perform those duties. The regulation has been amended to allow a system to propose alternate staffing plans. The plan must be submitted to the cabinet for approval and must be consistent with KRS 223.210.
- (9) **Subject Matter: Employee “use” vs. “intervention”**  
(a) **Comment: Ruth Lancaster**  
The rewording (change of “use” to “intervention”) dramatically changes the interpretation of this regulation, Section 2(3)(b).

- (b) **Response:** The Cabinet agrees with the comment and has amended the regulation to use the term “use” instead of “intervention”.
- (10) **Subject Matter: Multiple treatment plants within one water system**
- (a) **Comment: Ruth Lancaster**  
Please clarify the intent of Section 2(4)(e) on page 18, specifically its impact on public water systems with more than one treatment plant.
- (b) **Response:** Each water plant within a public water system will have a unique classification and sub-classification based on the 24-hour production rate of each plant, source water, and filtration.
- (11) **Subject Matter: Staffing requirements for Sub-class A water plants**
- (a) **Comment: Annette DuPont-Ewing (Kentucky Municipal Utilities Association)**  
Kentucky Municipal Utilities Association requests that the regulation be amended so that the properly certified operator must be on site only for one shift per day for Class IIA and Class IVA water treatment plants. Additionally, KMUA requests that a Class IIA and Class IVA water treatment plants be permitted to use a certified operator of a lesser class for up to two shifts per day.
- (b) **Response:** The agency believes that regulation requirement that limits a less-certified operator (someone certified at the level of a class one lower) to only one shift per day gives the necessary flexibility in staffing while retaining the adequate level of protection. The intent is to have a properly certified operator present at the water plant during the time water is being treated at that plant. Sub-class A water treatment plants have complex treatment processes that require attention and monitoring to assure contaminants are adequately removed prior to consumption. Additionally, allowing an operator who is certified at a lower level to be in charge of a water treatment plant for up to two shifts each day may allow those treatment plants with only two shifts to not employ an appropriately certified operator. It is not uncommon for a water treatment plant to have only two shifts per day under normal operation.
- (12) **Subject Matter: Certification requirements for a subcontracted operator or firm**
- (a) **Comment: Annette DuPont-Ewing (Kentucky Municipal Utilities Association)**  
KMUA requests that the agency amend Section 1(3)(a) to add “with the same staff certification requirements”.
- (b) **Response:** The additional language would be redundant with the provisions of Section 1(3)(b), which requires the contract operator or operations firm to provide the appropriate proof of certification to the cabinet.
- (13) **Subject Matter: Corresponding requirements in 401 KAR 11:040**
- (a) **Comment: Annette DuPont-Ewing (Kentucky Municipal Utilities Association)**  
KMUA disagrees with Section 2(2), which states, “The water treatment plant and water distribution system classifications correspond to the operator classifications established in 401 AKR 11:040.”
- (b) **Response:** The plant classifications in 401 KAR 8:030 and the operator classifications in 11:040 correspond.

**(14) Subject Matter: Classifications according to population**

**(a) Comment: Annette DuPont-Ewing (Kentucky Municipal Utilities Association)**

KMUA believes that residents living in a city with a small population number deserve the same water quality as those living in the largest city in Kentucky. KMUA asks why the classification is based on population.

**(b) Response:** The distribution system classifications are based on population, not the level of treatment. Small water systems have less complex distribution systems. Certification training provided by the Division of Compliance Assistance is similar for all classifications of distribution systems. Treatment plant classification is determined based on the assigned design capacity of the plant, not the population served.

**(15) Subject Matter: Limited classification**

**(a) Comment: Annette DuPont-Ewing (Kentucky Municipal Utilities Association)**

KMUA asks why a limited classification is available to a water treatment facility serving a school or a semipublic water system.

**(b) Response:** KRS 223.160(2) requires the cabinet to offer limited classification for these facilities.

**V Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body**

The Division of Water reviewed the comments and, as a result, is amending the administrative regulation as follows:

**Page 1**

**RELATES TO**

**Lines 7 and 8**

After "EO", insert "2009-538".

Delete the remainder of the RELATE TO paragraph in its entirety.

**Page 1**

**STATUTORY AUTHORITY**

**Line 9**

After "KRS", insert "223.180 - 223.220".

Delete "223.160-223.220".

After "224.10-110", insert ", EO 2009-538".

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY**

**Line 14**

After "KRS 224.10-110", insert "requires".

Delete "directs".

**Line 15**

After "enforce administrative regulations", delete "adopted by the secretary".

**Lines 17 and 18**

After "operators. EO", insert the following:

2009-538, effective June 12, 2009, establishes

Delete the following:

2008-507 and 2008-531, effective June 16, 2008, abolish the  
Environmental and Public Protection Cabinet and establish

**Page 4**

**Section 1(2)(c)1.b.**

**Line 1**

After "charge shall be", delete the following:  
on call and shall be

**Page 4**

**Section 1(2)(c)2.b.**

**Line 14**

After "charge shall be", delete the following:  
on call and shall be

**Page 5**

**Section 1(2)(c)4.b.**

**Line 6**

After "responsible charge shall be", delete the following:  
on call and shall be

**Page 5**

**Section 1(2)(c)5.**

**Line 11**

After "charge of the system.", insert the following

6. A water treatment plant may propose an alternate staffing requirement to the  
staffing requirement established in this paragraph.

a. The proposal shall be submitted to the cabinet and shall thoroughly explain the  
alternate proposal.

b. The proposal shall demonstrate:

(i) A necessity for the water system to vary from the requirement in this  
paragraph; and

(ii) An equal level of protection of human health and the environment.

c. The cabinet shall not approve an alternate proposal that does not propose that a  
duly certified operator in direct responsible charge operate a water treatment plan,  
in accordance with KRS 223.210.

(d)

Delete "(c)".

**Page 5**

**Section 1(2)(c)**

**Line 14**

After "certification and who", insert "shall be".  
Delete "is".

**Page 5**

**Section 1(2)(d)**

**Lines 14 and 15**

After "charge of the system.", insert "(e)".  
Delete "(d)".

**Page 6**

**Section 1(3)(b)1.**

**Line 9**

After "telephone number of", insert "the".

**Page 6**

**Section 1(3)(b)1.a.**

**Line 10**

After "a.", delete "The".  
Capitalize the first letter of "certified".

**Page 7**

**Section 1(5)(a)**

**Line 2**

After "days of", insert "a".  
After "operator employment", insert "change".  
Delete "changes".

**Page 15**

**Section 2**

**Line 11**

After "II, III, or IV", insert a semicolon.  
Delete the comma.  
After "A or B", insert a semicolon.  
Delete the comma.

**Line 12**

After "II, III, or IV", insert a semicolon.  
Delete the comma.

**Page 16**

**Section 2(3)(b)**

**Line 11**

After "with limited employee", insert "use".  
Delete "intervention".

**Page 18**

**Section 2(4)(c)1.b.**

**Lines 4 and 5**

After “surface water that uses”, insert “gravity filtration”.

Delete the following:

a component of conventional filtration treatment.

**Page 18**

**Section 2(4)(c)2.**

**Line 6**

After “treatment plant that treats”, insert “: a.”.

**Line 7**

After “surface water and”, insert the following:

uses a filtration process other than gravity filtration; or

b. Groundwater not under the direct influence of surface water that does not use filtration processes.

Delete the following:

does not employ any component of conventional filtration treatment.